

**UNITED STATES DEPARTMENT OF COMMERCE****Patent and Trademark Office**

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/678,766 10/02/00 DORSCHNER

A BEIERSDORF 6

HM12/0823

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EXAMINER

COLLABORATOR	ART UNIT	PAPER NUMBER
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1616  
**DATE MAILED:**

08/23/01

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**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/678,766	DORSCHNER ET AL.
	Examiner	Art Unit
	Sharmila S. Gollamudi	1616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1) Responsive to communication(s) filed on 02 October 2000.

2a) This action is **FINAL**.                            2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4) Claim(s) 1-3 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-3 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved.

12) The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. § 119**

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

**Attachment(s)**

15)  Notice of References Cited (PTO-892)                            18)  Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_ .

16)  Notice of Draftsperson's Patent Drawing Review (PTO-948)                            19)  Notice of Informal Patent Application (PTO-152)

17)  Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ .                            20)  Other: \_\_\_\_\_ .

## **DETAILED ACTION**

### ***Specification***

The disclosure is objected to because of the following informality: The heading "A Brief Description of the Drawings" followed by the brief description, is missing. The appropriate correction is required.

### ***Claim Objections***

The examiner suggests reconstructing the sentence of claim 1 such that the "comprising at least..." is on the same line as "O/W microemulsion." The examiner also suggests deleting "a" in line 1 of claim 1 and inserting "a" in line 3 after "properties."

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-3 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claims 1, 2, and 3 the terms "in particular" and "preferable" are relative terms, which render the claims indefinite because it is unclear whether the limitations following the terms are indeed the limitations of the claim. A broad range or limitation together with a narrow range or limitation that falls within the broad range or limitation (in the same claim) is considered indefinite, since the resulting claim does not clearly set forth

the metes and bounds of the patent protection desired. In the present instance, claim 2 recites the broad recitation of .01% to 20%, and the claim also recites .05% to 10% and .5% to 6%, which are the narrower statement of the range/limitation. In instant claim, the claim recites the broad recitation of .1% to 10% and the claim also recites .5% to 6%, which is the narrower statement of the range/limitation.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3 are rejected under 35 U.S.C. 102(b) as being anticipated by Ascione et al (5858334). Ascione et al disclose oil in water emulsions containing dihydroxyacetone. The cosmetic composition contains .5% to 20% emulsifier and .5% to 10% dihydroxyacetone (see example 1 and col 3 and 4, beginning on line 55). The reference's emulsifiers such as fatty alcohol ethoxylates read on the instant claims (col 2 and 3, beginning on line 46).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 2 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ascione et al.

Ascione et al as set forth above, teach the use of .5 to 20% emulsifier and .5% to 10% dihydroxyacetone in the composition. Ascione et al does not teach using .01% of an emulsifier and .1 % of dihydroxyacetone.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to manipulate the conditions to obtain the best possible results. One would be motivated to do so since the general percents (.5%-20%) (.5%-10%) are disclosed in the prior art, it is not inventive to discover the optimum or workable range in the field through routine experimentation.

Any inquiry concerning this communication from the examiner should be directed to Sharmila S. Gollamudi whose telephone number is (703) 305-2147. The examiner can be normally reached M-F from 7:30 am to 4:15pm.

If attempts to reach the examiner by the telephone are unsuccessful, the examiner's supervisor, Jose Dees, can be reached at (703) 308-4628. The fax number for this organization where this application or proceeding is assigned is (703) 308-4556.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist, whose telephone number is (703) 308-1235.



SABIHA QAZI, PH.D  
PRIMARY EXAMINER